STATE OF MICHIGAN

COURT OF APPEALS

In re AYOTTE/ANDREWS, Minors.

UNPUBLISHED
October 22, 2015

No. 325609
Oakland Circuit Court
Family Division
LC No. 11-782083-NA

In re ANDREWS, Minors.

No. 325611
Oakland Circuit Court
Family Division
LC No. 11-782083-NA

Before: RONAYNE KRAUSE, P.J., and GLEICHER and STEPHENS, JJ.

PER CURIAM.

In these consolidated appeals, the circuit court terminated respondent-mother's parental rights to her three minor children and respondent-father's rights to the younger two, who are his biological children. Respondent-father contends that the circuit court violated his due process rights by taking jurisdiction over the children based solely on mother's plea. However, the circuit court did conduct a "fact finding" after which it determined that evidence supported the father's unfitness, meeting the technical requirements of an adjudication. Both parents also challenge the statutory grounds for termination and the court's conclusion that termination of their parental rights was in the children's best interests. Because these claims lack merit, we affirm.

I. FACTUAL BACKGROUND

Respondents have two preschool-age children together, JLA and LJA, and mother has a six-year-old son from a prior relationship, JMA. In March 2011, when mother was pregnant with the youngest child, the Department of Human Services (DHS)[1] took the two elder children into care. The DHS had received reports of physical abuse and neglect by mother against JMA,

[1] The department has since been renamed the Department of Health and Human Services.

and domestic violence between respondents. JMA was placed with his father and JLA with her maternal great-grandmother, while respondents participated in services, including parenting classes and counseling. The children were returned to their mother's care in late 2011, and mother and the children lived with her grandparents at that time. The DHS assisted mother in securing an apartment and furnishings, and provided in-home services geared toward maintaining mother and children as a family unit. Mother reported that she and father were no longer romantically involved. The court dismissed jurisdiction over the children in May 2012.

By the fall of 2012, respondents had reunited and were living together with the three children. In September 2012, police were summoned to the family's home due to a complaint of domestic violence. Father had physically assaulted mother, leaving her with a black eye and other injuries, and mother had hit father on the head with a frying pan. Mother claimed self-defense. The children were present during the incident. Respondent-mother thereafter left the home with the children, but had been unable to locate suitable housing and was then homeless. The DHS took all three children into care on October 31, 2012, and placed the eldest with his father and the younger two with their grandmother.

The DHS filed a petition to take jurisdiction over the children, citing the 2011 child protective proceeding, the September 2012 domestic violence incident, and mother's continued relationship with father despite their history of domestic violence and despite her earlier participation in services to avoid such relationships. Mother pleaded to the allegations in the petition and the court took jurisdiction over the children following a November 13, 2012 hearing. Father asserted his demand for an adjudication trial before a judge, without requesting a jury trial. At the next court date on December 6, 2012, the court conducted a dispositional hearing relating to mother with all counsel present. The court then switched gears and initiated a "fact finding" to inquire into the allegations against father. The court took testimony from mother. Father did not object and even presented his own witness—the officer who responded to the September 2012 domestic violence call from respondents' home. The court found sufficient evidence that an altercation had occurred between respondents in the home in the presence of the children and that the parties had continued their romantic relationship despite their history of domestic violence. Accordingly, the court found by a preponderance of the evidence that the facts cited in the petition against father had been proven.

The child protective proceedings continued for more than two years. During that time, the DHS provided extensive services to both parents. Respondent-mother took parenting classes and received counseling geared toward avoiding violent, unhealthy relationships. She was ordered to participate in random drug screens and when several tested positive for marijuana and cocaine, she was referred for substance abuse and mental health counseling. Therapists ultimately recommended inpatient treatment, but she never completed a program. Respondent-father completed parenting classes and participated in anger management counseling. The DHS eventually recommended that he submit to psychological and psychiatric evaluations. The evaluations revealed that father was cognitively impaired and had difficulty caring for himself. A therapist recommended that he seek placement in a group home given that he had found himself homeless at different stages of the proceedings.

During the 2012-2014 child protective proceeding, mother reported that she was living with her grandparents. However, father presented an apartment lease listing mother as cotenant and the landlord informed a caseworker that mother was living there.

Following a multiple-day termination hearing, the circuit court found termination supported under three separate statutory grounds as to both parents and found termination to be in the children's best interests. These consolidated appeals followed.

II. ADJUDICATION

Respondent-father claims on appeal that the circuit court violated *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014), and his right to due process when it took jurisdiction over the children based solely on the mother's no-contest plea.

Child protective proceedings are comprised of two phases—the adjudicative phase and the dispositional phase. During the adjudicative phase, the court considers the allegations raised in the petition for jurisdiction and determines whether a preponderance of the evidence supports parental unfitness. If the evidence suffices, or if the parent pleads to the allegations, the court may take jurisdiction over the child and order the parent to participate in services. *Sanders*, 495 Mich at 404-406; *In re S Kanjia*, 308 Mich App 660, 663; 866 NW2d 862 (2014).

> Before *Sanders* was decided, pursuant to the one-parent doctrine, a trial court was not required to adjudicate more than one parent; instead, a trial court could establish jurisdiction over a minor child by virtue of the adjudication of only one parent, after which it had authority to subject the other, unadjudicated parent to its dispositional authority.
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> However, in *Sanders*, our Supreme Court held that the one-parent doctrine violated procedural due process. Recognizing that the right of a parent to make decisions concerning the care, custody, and control of his or her children is fundamental, and that due process demands minimal procedural protections be afforded an individual before the state can burden a fundamental right, our Supreme Court held that a parent must be individually adjudicated as unfit before the state can interfere with his or her parental rights. Because the one-parent doctrine allowed a trial court to interfere with the constitutionally protected parent-child relationship without any finding that the parent was unfit, it violated the Due Process Clause of the Fourteenth Amendment. [*Kanjia*, 308 Mich App at 664-665 (quotation marks and citations omitted).]

Following *Sanders*, the state must protect a parent's due process rights by seeking the individual adjudication of that parent before it may seek termination of his or her parental rights. *Sanders*, 495 Mich at 421-422; *Kanjia*, 308 Mich App at 665.

Here, respondent-father never requested a jury trial at his adjudication and therefore a bench trial was all that was required. Although the court failed to use the term "adjudication," it provided such a proceeding. After adjudicating with respect to respondent-mother, the court

stated its intent to "schedule a fact-finding with regard to father." On December 6, 2012, the court took testimony from respondent-mother about her ongoing relationship with respondent-father and their history of domestic violence. Mother testified about the altercation on September 20, 2012, and indicated that the children were home at the time. The court also heard testimony from Officer Ruben Garcia who responded to the domestic violence call. The court considered the evidence present, weighed the credibility of the witnesses, and determined that the DHS had proven the allegations raised against father in the petition by a preponderance of the evidence. Accordingly, the court made findings specific to respondent-father supporting the exercise of jurisdiction over the children. See *Sanders*, 495 Mich at 405 ("When the petition contains allegations of abuse or neglect against a parent, MCL 712A.2(b)(1), and those allegations are proved by a plea or at the trial, the adjudicated parent is unfit.").

III. STATUTORY GROUNDS

Both respondents argue that the trial court erred in finding statutory grounds for termination of their parental rights established by clear and convincing evidence.

Pursuant to MCL 712A.19b(3), a circuit court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review a circuit court's factual finding that a statutory termination ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

The court terminated respondents' parental rights based on a supplemental petition. When termination is based on "grounds new or different from those that led the court to assert jurisdiction over the children, the grounds for termination must be established by legally admissible evidence." *In re Jenks*, 281 Mich App 514, 516; 760 NW2d 297 (2008), citing MCR 3.977(F)(1)(b).

The court found that termination of both parents' rights to the children was supported by three separate statutory grounds under MCL 712A.19b(3):

> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
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> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
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> * * *

> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
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> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The DHS established by clear and convincing legally admissible evidence that termination of both respondents' parental rights was supported under factor (c)(*i*). The primary issue leading to adjudication was the parents' history of domestic violence. Respondents' violent relationship led to the removal of their children from their care in 2011, and again less than six months after their return. Both parents were offered counseling services to break the cycle of violence. Despite these services, respondents rekindled their romance after the first child protective proceeding and moved back in together during the current proceedings. This evidence clearly shows that neither parent has adequately benefited from counseling directed toward avoiding abusive relationships. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded in part on other grounds as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010) ("[I]t is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody."). Accordingly, the court properly terminated both respondents' parental rights under factor (c)(*i*).

Further support for termination was established under factors (g) and (j). Respondents' decision to continue their relationship, which again devolved into violence while the children were in the home, is clear evidence of the parties' past inability to provide proper care and custody for the children. And their failure to benefit from domestic violence counseling, combined with their mid-proceeding decision to cohabitate again, clearly supports that neither will be able to provide proper care and custody within a reasonable time. Respondents' inability to recognize the effect of their continuing relationship on the children further supports that the children faced likely harm if returned to their parents' care.[2]

[2] We acknowledge that in *In re Plump*, 294 Mich App 270, 273; 817 NW2d 119 (2011), this Court held that "it would be impermissible for a parent's parental rights to be terminated solely because he or she was a victim of domestic violence." The circuit court in this case did not find grounds to terminate mother's parental rights simply because she was the victim of domestic violence. Rather, the court determined that mother had not benefitted from counseling geared toward avoiding abusive relationships, had reunited with her abusive partner for a second time, and intended to bring her children back into that charged environment.

Respondent-mother's drug abuse is further evidence supporting termination of her parental rights under factors (g) and (j). During these proceedings, mother tested positive for cocaine and marijuana on numerous occasions. She also failed to appear for several drug tests, which were considered positive. She was referred for both inpatient and outpatient treatment for substance abuse and mental health issues. Despite repeated opportunities, mother never completed a program. Accordingly, it is unlikely that mother could remedy her substance abuse issues within a reasonable time in order to care for her children.

Respondent-father's cognitive impairments and slow progress despite consistent participation in services also supports termination of his parental rights under factors (g) and (j). The witnesses testified that father fully participated in anger management therapy and mental health counseling, completed parenting classes, and entered a life skills program for assistance with housing, literacy, and interpersonal skills.[3] Moreover, there is some evidence that father benefited from services. For example, the life skills coach testified that father's interpersonal skills had improved and he had learned to follow through with community resources without assistance. However, the foster care worker who oversaw parenting time sessions observed that father had not learned how to adequately supervise the children, putting them at risk of harm. And father still had not progressed to a point where he could provide and care for himself, negating that he could safely provide care and custody for two young children.

As the DHS established three separate statutory grounds for termination by clear and convincing evidence, we discern no error in the circuit court's findings in this regard.

IV. BEST INTERESTS

Both respondents also challenge the circuit court's determination that termination of their parental rights was in the children's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *Moss*, 301 Mich App at 90. The lower court should weigh all the evidence available to it in determining the child's best interests. *Trejo*, 462 Mich at 356-357. Relevant factors in this consideration include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *Olive/Metts*, 297 Mich App at 41-42 (citations omitted). Whether the child has been placed with relatives must also be considered, but does not preclude a determination that termination is in the children's best interests. See *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010); *Olive-Metts*, 297 Mich App at 43.

Here, all three children were placed with relatives; the eldest with his father and the younger two with their paternal grandmother. JMA's father and the foster care work assigned to

[3] Father also tested positive for marijuana at points during the proceedings. There is some evidence that he possessed a medical marijuana card. We need not delve into this ground given the myriad other bases for termination.

his case both testified that the child's behavior regressed following visitation with his mother. JMA even acted out violently after visits. JMA's father indicated that he had petitioned for full custody in the past, but that the court had placed the matter "on hold" because of respondent-mother's "situation." The foster care worker for the younger children testified that the children were "thriving" in their grandmother's care. The worker recommended termination of the parents' rights despite their relative placement because:

> It's in their best interest, because the relative has no safety concerns, she's taking care of their needs, they're thriving and because [respondent-father] continues to engage with mother who has not satisfied her requirements of why the kids came into care. That is a huge concern that he would be around her and the children. It's a concern, because he doesn't feel he need[s] any services with regard to an appointed guardian, needing his mother to assist [him].

Upon inquiry from the court, the case worker indicated that the paternal grandmother was willing to plan for the children. Accordingly, it appears from the record that the relative placements preferred to have sole custody of the children without interference from the respondent parents.

The witnesses testified that both parents shared a bond with their children. However, neither exhibited the parenting ability necessary to take full custody. After respondent-mother's visits with JMA, the child's behavior regressed. He sometimes engaged in violent behavior and, despite his young age, would make gang signs and pretend to shoot guns. His post-visitation behavior was so disruptive that the kindergartner had a standing appointment with the school social worker on each subsequent school day. Despite completing parenting classes, respondent-father's parenting skills had not improved. Father repeatedly telephoned his mother during visitation sessions for advice on how to handle the children.

Neither parent could provide permanency, stability, or finality for the children. Despite more than three years of services, respondent-mother had not addressed her engagement in physically abusive relationships. She continued to abuse substances and had not followed through on mental health treatment. Further, respondent-mother was living with relatives, but had been evicted in the past, leaving no guarantee that she could ever provide a stable home for her children in this manner.

Respondent-father also was unprepared to provide a stable, permanent home for the children. After he and respondent-mother left their shared apartment, he rented a new apartment on his own. Respondent-father procrastinated in securing electrical services for the residence. He had an outstanding balance with the power company that had to be repaid before new services could be initiated. Respondent-father preferred to spend his money on securing a medical marijuana card instead. Moreover, the apartment's kitchen cabinets were filled with living and dead insects. Respondent-father affirmatively indicated that he would not resolve the issue and planned instead to keep his food in crates. Accordingly, respondent-father exhibited a pattern of poor decision-making that prevented him from providing a stable home for the children. In addition, respondent-father's psychological evaluation revealed that he would benefit from the assistance of a guardian as he could not even properly care for himself.

Although the parents love their children, a preponderance of the evidence supports that termination of their parental rights was in the children's best interests. We therefore discern no error in the termination of their parental rights.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ Cynthia Diane Stephens